

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8587 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LPS EQUIPMENTS LTD

Versus

RAJESH R CHAUHAN

Appearance:

MR KM PATEL for Petitioner

MR NR SHAHANI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 19/11/98

ORAL JUDGEMENT

Rule. On the request of the parties, the matter is taken up for final hearing.

2. This Special Civil Application is directed against the order dated 10.11.1997 passed by the Labour Court, Bharuch in Misc. Application No. 3 of 1996 to 5 of 1996 directing the petitioner company to pay 75 per cent of wages as subsistence allowance after a period of

90 days from the date of suspension pending enquiry to the respondents.

Necessary facts are that on 4.4.1993 respondent No. 1 was issued chargesheet for go slow. He was also put under suspension. Respondent No. 2 and 3 were issued chargesheet and placed under suspension on 6.4.1993. Respondent No. 1 was issued additional chargesheet on 10.4.1993. It is alleged that the first respondent was called by the administrative officer in his cabin on 4.4.1993 for service of the chargesheet for indulging and instigating the workers wilfully and deliberately to go slow in work. It is further alleged that respondent No. 1 visited the administrative officer in his cabin and received the chargesheet. He left the cabin and returned along with respondent Nos. 2 and 3. It is further alleged that the respondents abused the administrative officer and assaulted him. On 14.2.1996 the respondent filed an application before the complainant that they have not been paid subsistence allowance as provided under the Model Standing Order No. 25. The learned judge has accepted the said application and directed to pay subsistence allowance at the rate of 75 per cent after the period of 90 days from the date of suspension.

3. It is contended by Mr. K.M. Patel, learned counsel for the petitioner that the learned judge of the Labour Court has failed to consider in right perspective as to whether the enquiry was prolonged beyond 90 days for the reasons directly attributable to the workmen. He has taken me to the enquiry proceedings. The English translation of the extracts of rojkam is given at page 49 of the paper-book. It is stated that proceedings have been delayed on account of adjournment sought by the workmen. It is also contended that though the cause of action arose to the respondent workmen for not paying subsistence allowance at an earlier date, the application has been filed before the Labour Court as late as on 11.2.1996. On the other hand learned counsel for the respondent workmen submitted that the petitioner company has been guilty in not paying the subsistence allowance as per the Model Standing Order No. 25. He has also pointed out that a complaint was lodged against the Government Labour Officer that in spite of directions given the subsistence allowance was not allowed as per the Model Standing Order No. 25. It is strongly argued that the respondent workmen alone cannot be responsible for the delay. It is also submitted that adjournments were not opposed by the Company. It is contended by Mr. Shahani, learned counsel, that subsistence allowance has

been reduced without notice to the workmen much after 90 days.

4. I have considered the rival contentions. In order to appreciate the contentions it would be convenient to read Model Standing Order No. 25(5)(b) as under:-

"25(b) A workman who is placed under suspension under clause (a) shall, during the period of such suspension, be paid a subsistence allowance at the following, namely:-

(i) Where the inquiry contemplated or pending is departmental, the subsistence allowance shall, for the first ninety days from the date of suspension be not less than one-half of the basic wages, dearness allowance and other compensatory allowances to which the workman would have been entitled if he were on leave with wages. If on account of prolongation of the departmental inquiry the workman continues to be under suspension for a period exceeding ninety days, the subsistence allowance shall for such period be not less than three fourths of such basic wages, dearness allowance and other compensatory allowance.

Provided that where such inquiry is prolonged beyond a period of ninety days for reasons directly attributable to the workman, the subsistence allowance shall, for the period exceeding ninety days be reduced to an amount upto one fourth of such basic wages, dearness allowance and other compensatory allowance."

5. The said rule postulates that subsistence allowance shall be given at the rate of 50% of basic wages, dearness allowance and other compensatory allowance for a period of 90 days from the date of suspension and if the enquiry is not completed during that period subsistence allowance shall be paid at the rate of 75% of basic wages, dearness allowance and other compensatory allowance. The exception to the said rule is that if the enquiry is prolonged beyond the period of 90 days for the reasons directly attributable to the workman, subsistence allowance shall be at the rate of 25% of basic wages, dearness allowance and other compensatory allowance. Extracts of rojkam page 49 of the paperbook clearly show that the enquiry was adjourned from time to time on the request made on behalf of the

workmen. It is of course, true that these adjournments were not opposed by the Company. It is also stated by respondent No. 2 Mohammad Ismail Patel in his affidavit dated 6.8.1998 that the enquiry is being conducted by Smt. Mayuriben Popat who is a lawyer and consultant staying at Baroda and Shri B.H. Raj, Advocate, is the Presenting Officer of the Company and is staying at Shuklathirth which is 10 km. away from Bharuch District. It is alleged that they were fixing the enquiry either on Saturday or Sunday or on a holiday as per their convenience. On several occasions with a view to avoid inconvenience adjournments are decided a day in advance between Smt. Popat, Shri Raj and the representative Mr. N.D. Parmar who is a practising trade unionist. It is further pointed out that sometimes such discussions between the two take place and the third one is subsequently informed. It is therefore submitted that the delay in enquiry cannot be attributable to the workmen alone. I am not impressed of this submission. The proceedings clearly show that during the period 1993 to 1996 all the adjournments were sought on behalf of the workmen. Simply because it is not opposed by the Company, it cannot be said that the delay is not attributable to the workmen. If the workmen were serious in completing the enquiry, no prayer for adjournment on their behalf ought to have been made. On the contrary, they should have insisted for completion of the enquiry. Thus, in my view, the Labour Court was in error in not considering that the delay in enquiry was attributable to the workmen. There is no substance in the contention of the learned counsel that subsistence allowance has been reduced without notice to the workmen as they have not disputed the fact that the proceedings were delayed on their own.

6. Mr. Shahani submits that the enquiry against respondent Nos. 2 and 3 is over, still they are getting subsistence allowance at the rate of 25%. The respondents may make appropriate representation in that regard to the petitioner company. If such representation is made, the same shall be considered in right perspective.

In view of the aforesaid, the Special Civil Application is allowed and the impugned order dated 10.11.1997 passed by the Labour Court is quashed and set aside. Rule made absolute to the aforesaid extent. No order as to costs.

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